BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ADELANTO ELEMENTARY SCHOOL DISTRICT, DESERT MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA, AND DESERT MOUNTAIN CHILDREN'S CENTER.

OAH CASE NUMBER 2025060065

# ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM, DENYING MOTION TO STRIKE, DENYING REQUEST FOR PROTECTIVE ORDER, AND DENYING REQUEST FOR SANCTIONS

NOVEMBER 13, 2025

On June 2, 2025, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Adelanto Elementary School District. The Office of Administrative Hearings is referred to as OAH.

On August 5, 2025, OAH granted Student's motion to amend and deemed filed Student's first amended complaint. Student's first amended complaint added Desert Mountain Special Education Local Plan Area, called SELPA, and Desert Mountain Children's Center as respondents. Student subsequently filed a second amended complaint on September 18, 2025.

On November 3, 2025, Respondents issued a subpoenas duces tecum on Cognitive Diagnostic Associates, corresponding to four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas. The Respondents previously served Student with the required notice to consumer regarding these subpoenas duces tecum. The Respondents served the required notices to consumer on Student on October 10, 2025. The Respondents served amended notices to consumer on October 14, 2025, to reflect the date of production as November 4, 2025, the first scheduled day of the due process hearing at that time. OAH subsequently granted Student's request to continue the due process hearing until December 9, 2025.

Student has already engaged in significant motion practice regarding these subpoenas. Student moved to quash those subpoenas, and sought a protective order preventing the Respondents from issuing further subpoenas on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas, through filings dated October 14, 17, and 20, 2025.

OAH ruled on Student's October 14, 2025, motion through a written order dated October 22, 2025. In that order, OAH denied Student's motion to quash and modified

the subpoenas deuces tecum and associated notices to consumer to reflect a production due date of December 9, 2025, the currently-scheduled first day of the due process hearing. OAH also denied Student's associated request for sanctions.

OAH also ruled on Student's October 17, and 20, 2025, motions in an order dated October 28, 2025. Student argued that the requested documents were protected by the California Constitution, the Family Educational Rights and Privacy Act of 1974, called FERPA, and the Health Insurance Portability and Accountability Act of 1996, called HIPAA. OAH denied Student's motion, finding that Student waived confidentiality protections by placing his educational and related health needs at issue, and the Respondents' subpoenas were narrowly tailored, both in time and in scope, to the issues at hand, and do not impermissibly seek protected information. OAH denied Student's related requests for a protective order and for sanctions.

The Respondents issued their subpoenas duces tecum on November 3, 2025.

Despite OAH's previous rulings, on November 4, 2025, Student filed a document entitled, "Parent's Motion to Strike and Sanction Unauthorized and Defective Subpoenas Issued without Judicial Authority and in Violation of Procedural Law." Through this motion, Student argues that Respondent's counsel lacked the authority to issue the November 3, 2025 subpoenas, that the subpoenas seek information protected under HIPAA, FERPA, and the procedural safeguards in the Individuals with Disabilities Education Act, called the IDEA, and that Respondents' issuance of the subpoenas reflects a repeated pattern of misconduct.

Student requests OAH "[d]eclare void, strike from the record, and formally dismiss as procedurally defective" the November 3, 2025 subpoenas, as well as issue a protective order preventing the Respondents from issuing further subpoenas, and other

sanctions. Student also requests various findings that the Respondents and their counsel engaged in bad faith conduct. Notably, Student's motion did not address his October 14, 17, or 20, 2025 filings, or OAH's corresponding October 22, and 28, 2025 orders. Student's motion includes citations to the California Code of Civil Procedure relevant to motions to quash and no authority regarding motions to strike. Although Student titles his motion as a motion to strike, it is in function a motion to quash the subpoenas. The undersigned considered it accordingly.

The Respondents filed an opposition to Student's motion on November 5, 2025. The Respondents argue that they provided Student with the required notice to consumer, and that Student exercised his right to challenge the subpoenas in previous motions. The Respondents also argue that an attorney for a party is authorized to sign the subpoenas and an Administrative Law Judge, called and ALJ, is not required to sign the subpoenas. The Respondents finally argue that the subpoenas comply with the requirements of HIPAA, FERPA, and the IDEA's procedural safeguards.

## APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right to present evidence and compel the attendance of witnesses in "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h); see also Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of the Code of Civil Procedure. Code of Civil Procedure section 1987.1 provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

## THE RESPONDENTS DID NOT FAIL TO SERVE STUDENT THE REQUIRED NOTICE TO CONSUMER

California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

As explained above, the Respondents served Student with the required notices to consumer on October 10, and 14, 2025. Student has fully litigated his objections to the subpoenas. Therefore, the is no valid argument that the Respondents failed to serve Student the required notices to consumer.

Neither party provided evidence regarding whether the proof of service of the notice to consumer was served on Cognitive Diagnostic Associates, Ashley Schwenn,

Sarah Meeks, Chelsea Swopes, and Kathryn Haas. (Code Civ. Proc., § 1985.3, subd. (c).) Student supported his motion with a declaration by Parent. The declaration contains significant argument that is not appropriate for a declaration of facts. However, the undersigned can interpret the document as necessary. Parent declared that she did not receive a copy of the notices to consumer when the Respondents served the November 3, 2025 subpoenas on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas. Parent did not make any declaration regarding whether the Respondents provided the required proof that it served Student with the notices to consumer in October 2025. (Code Civ. Proc., § 1985.3, subd. (c).)

The Respondents' motion and supporting evidence is similarly silent. The proof of service on the November 3, 2025 subpoenas indicated that they were served on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas via US Mail and email. It is silent as to whether the Respondents served the required proof that it served Student with the notices to consumer in October 2025. (Code Civ. Proc., § 1985.3, subd. (c).) Nevertheless, the Respondents have otherwise complied with the notice to consumer requirements.

Even if the Respondents did not serve the required proof of service, that error can be corrected without quashing the subpoenas. Student argues that OAH quashed Adelanto's subpoenas earlier in this matter, on August 27, 2025, under similar circumstances. However, the circumstances here are different. There, Adelanto failed to establish that it provided the required notice to consumer to Student regarding those subpoenas. Here, the is no such dispute. Rather, the failure to provide Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas with the required proof that it served Student with the notices to consumer in October

2025 can be cured by Respondents serving them with a copy of this Order. (Code Civ. Proc., § 1987.1.) As explained in the order section below, this Order does so.

## THE RESPONDENTS' ATTORNEY MAY SIGN THE SUBPOENAS

Student argues that the subpoenas are not valid because they were, "issued solely by the [Respondents'] counsel, not by an [ALJ], and therefore lacked legal authority." Student asserts that, "[u]nder California Code of Civil Procedure [section] 1987.1, only the tribunal (OAH) has authority to issue, modify, or enforce a subpoena duces tecum." Student's argument is not persuasive and is inconsistent with the law.

Student misreads California Code of Civil Procedure section 1987.1, which authorizes courts to, "make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders." The issuance of subpoenas is controlled by California Code of Civil Procedure section 1985, which OAH looks to by analogy regarding subpoenas in due process proceedings. (See Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) In California, licensed attorneys may sign subpoenas. (Code Civ. Proc., § 1985, subd. (c).) OAH subpoena form reflects this fact, indicating that either a licensed attorney or an ALJ may sign the subpoena.

Moreover, there is no legal difference to the effectiveness of a subpoena whether it is signed by an ALJ or an attorney. Subpoenas may be issued by a licensed attorney, or by a judge, or clerk of the court. (Code of. Civ. Proc., § 1985, subd. (c).) Courts, including OAH, generally sign subpoenas on behalf of parties who are not represented by legal counsel. Courts must issue subpoenas upon request. (*Id.*; see also *McLeod v. Board of Pension Commissioners* (1970) 14 Cal.App.3d 23, 61.) However, a court's issuance of a subpoena does not insulate that subpoena from being quashed. (*McLeod,*

*supra*, 14 Cal.App.3d at p. 61.) The same principles apply to OAH. (*Ibid*. [citing *Hannah v. Larche* (1960) 363 U.S. 420, 442, 80 S.Ct. 1502.) Therefore, there is no merit in Student's argument that the November 3, 2025 subpoenas are defective because they were signed by Respondents' counsel and not an ALJ.

## THE SUBPOENAS DO NOT VIOLATE STUDENT'S PRIVACY AND SEEK DOCUMENTS REASONABLY NECESSARY TO THE ADJUDICATION OF STUDENT'S COMPLAINT

Student argues that the subpoenas to Cognitive Diagnostic Associates and the four associated assessors seek information protected by HIPAA, FERPA, and the IDEA's procedural safeguards.

California law recognizes a constitutional right to privacy in an individual's medical history. (See *Pettus v. Cole*, (1996) 49 Cal. App. 4th 402, 440.[ "the 'zones of privacy' created by Article 1 , section 1 of the California Constitution extend to the details of one's medical history"]; *Palay v. Superior Court, (1993)* 18 Cal. App. 4th 919, 932, ["Fundamental to the privacy of medical information is the ability to control its circulation …"] The constitutional right of privacy is not absolute but is subject to invasion where a compelling public interest is involved. (*Freed v. Home Depot U.S.A, Inc.* (S.D. Cal 2019) 2019 W.L. 183833, p. 5; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1, 37.) State law governs an individual's right to privacy in a civil matter. (Fed. Rule Evid. 501; *Freed v. Home Depot U.S.A.* (S.D. Cal. 2019) 2019 WL 183833.)

Student has already raised these objections under HIPAA and FERPA through his October 17, and 20, 2025 filings. OAH has already denied Student's motion in its October 28, 2025 order. Student has not established that he is entitled to raise those

objections again, or if OAH was to reconsider its previous order, that the outcome should be different. Aside from broad references to HIPAA and FERPA, Student provided no legal authority supporting his argument or interpreting HIPAA or FERPA such that OAH should quash the subpoenas. Rather, Student conclusively states that the subpoenas seek records whose protections are, "guaranteed by federal law." Student's unsupported and conclusory statement is not persuasive.

Student supported his motion with an email purporting to be from Cognitive Diagnostic Associates to Parent, which explained Cognitive Diagnostic Associates' position that it was not required to provide records pursuant to the November 3, 2025 subpoenas. This email is not legal authority and does not further Student's arguments.

Student finally argues that the IDEA's procedural safeguards also protect the requested information. Student broadly cites to title 20 United States Code section 1415, subdivision (b), in support of his argument. That subdivision explains various procedures States receiving special education funding under the IDEA must establish. This subdivision established that special education due process complaints are confidential, but it does not govern subpoenas or otherwise protect educational records. (see 20 U.S.C. § 1415(b)(7)(A).) Therefore, Student failed to establish that the subpoenas should be quashed on this ground, or that he is entitled to a protective order.

Embedded in Student's motion is an assertion that Parent has her own privacy rights to these records separate from Student. Student provides no legal support for this assertion and it is not persuasive. Overall, Student failed to prove that the November 3, 2025 subpoenas should be quashed for impermissibly seeking protected information under HIPAA, FERPA, or the IDEA's procedural safeguards.

## STUDENT HAS NOT ESTABLISHED THAT THE RESPONDENTS HAVE ENGAGED IN CONDUCT JUSTIFYING SANCTIONS

In his motion, Student argues that the Respondents have engaged in conduct that, "constitutes procedural harassment and bad-faith litigation aimed at exhausting and intimidating a self-represented parent." As explained below, this argument is not persuasive.

In certain circumstances, an ALJ presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

OAH also has the authority to order that expenses be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, §

11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

In support of this motion, Student recycled unpersuasive arguments, made in large part through emotionally charged conclusory statements, which OAH has considered and rejected in multiple previous motions. Student's recitation of events in support of his argument that the Respondents' have engaged in bad faith conduct notably omits Student's previous unsuccessful attempts to seek sanctions, and OAH's previous determinations that the Respondents have not engaged in bad faith conduct.

Student's arguments are equally unavailing here. For example, Student failed to prove that the November 3, 2025 subpoenas are improper. This critically undermines his argument for sanctions regarding the Respondents' actions in issuing those subpoenas. Student also provided no legal authority in support of this request for sanctions. Student has not established that the Respondents have engaged in conduct justifying sanctions.

## ORDER

1. Student's motion to quash Respondents' subpoenas deuces tecum to Cognitive Diagnostic Associates, corresponding to four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas is DENIED. The records shall be produced by Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas to the ALJ through Case Center no later than December 9, 2025 at 9:30 AM.
2. Respondents have provided Student the necessary notice to consumer related to the November 3, 2025 subpoenas. The Respondents shall serve a copy of this Order on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas within three business days of this Order. The Respondents shall file with OAH and Student a proof of service reflecting this service.
3. Student's request for a protective order is DENIED.
4. Student's request to strike the November 3, 2025 subpoenas is DENIED.
5. Student's request for sanctions is DENIED.

IT IS SO ORDERED.

*Ashok Pathi*

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings